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3 Nevada Bar No. 004417

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8 and

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15 Bank of America Mortgage Capital Corporation

16 09-77522

17 **UNITED STATES BANKRUPTCY COURT**
18 **SOUTHERN DISTRICT OF NEVADA**

19 In Re:

20 Franklin G. Fuentes and Christine M. Fuentes

21 09-23777-lbr

22 MS Motion No.

23 Date:

24 Time:

25 Chapter 13

26 Debtors

19 **DECLARATION RE BREACH OF CONDITION**

20 STATE OF:)

21)ss.

22 COUNTY OF:)

23 I, LeeAnn Anderson declare and state:

24 1. As to the following facts, I know them to be true of my personal knowledge, and if called
upon to testify in this action, I could and would testify competently thereto.

25 2. I am an employee of Bank of America Mortgage Capital Corporation, Secured Creditor
herein, and am most familiar with the loan and the ongoing litigation.

26 3. The real property subject to the Trust Deed is commonly described as 4703 Visconti Way,
Las Vegas, NV 89141 and legally described as follows:

1 PARCEL ONE (1):

2 LOT 24 BLOCK A OF LAURENTIA AT SOUTHERN HIGHLANDS, AS SHOWN BY
 3 MAP THEREOF ON FILE IN BOOK 96, OF PLATS, PAGE 65, IN THE
 OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

4 RESERVING THEREFROM A NON-EXCLUSIVE RIGHT AND EASEMENT OF
 5 INGRESS, EGRESS, AND OF USE AND ENJOYMENT IN TO AND OVER THE
 COMMON ELEMENTS AS SET FORTH IN THE DECLARATION OF COVENANTS,
 CONDITION AND RESTRICTIONS AND RESERVATION OF EASEMENTS FOR
 SOUTHERN HIGHLANDS, RECORDED JANUARY 6, 2000 IN BOOK 20000106 AS
 DOCUMENT NO. 01678, AS THE SAME FROM TIME TO TIME BE AMENDED
 7 AND/OR SUPPLEMENTED IN THE OF OFFICE OF THE COUNTY RECORDER OF
 CLARK COUNTY, NEVADA.

8 PARCEL TWO (2):

9 A NON-EXCLUSIVE RIGHT AND EASEMENT OF INGRESS, EGRESS, AND OF
 10 USE AND ENJOYMENT IN TO AND OVER THE COMMON ELEMENTS AS SET
 FORTH IN THE DECLARATION OF COVENANTS, CONDITION AND
 RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SOUTHERN
 HIGHLANDS, RECORDED JANUARY 6, 2000 IN BOOK 20000106 AS
 DOCUMENT NO. 01678, AS THE SAME FROM TIME TO TIME BE AMENDED
 12 AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF
 CLARK COUNTY, NEVADA.

14 4. I have examined the document entitled "Order Regarding Adequate Protection", a copy of
 which is attached hereto and marked as Exhibit "A" and incorporated herein by this reference, and am
 15 representing my personal knowledge as to whether the Debtors have complied with the requirements of said
 16 Order.

18 5. Pursuant to the aforementioned Order, the Debtors would have fifteen (15) days from the
 date of this Declaration in which to cure the delinquencies due. If upon the 16th day, Debtors has failed to
 19 so cure those delinquencies, the automatic Stay Order would be vacated and extinguished as to this Secured
 20 Creditor.

22 6. As of the date of this Declaration, the Debtors have not made the payments as required by
 the aforementioned Order. The Debtors are presently past due as follows:

2 Monthly Payments at \$2,815.57 (August 1, 2010 - September 1, 2010)	\$5,631.14
2 Late Charges at \$112.83 (August 1, 2010 - September 1, 2010)	\$225.66
2 Adequate Protection Charges at \$1,616.70 (August 1, 2010 - September 20, 2010)	\$3,233.40
Total \$9,090.20	

1 7. Debtors are responsible for the subsequent payments that will come due during this
2 Breach period:

3 a. 1 Monthly Payment at \$2,815.57
4 b. 0 Stipulated payments

5 **PARTIAL TENDERS WILL NOT BE ACCEPTED**

6 8. Due to Debtors' failure to timely and properly comply with the Order as set forth
7 hereinabove, Secured Creditor has been forced to incur additionally attorneys' fees to obtain relief from the
8 Stay Order to take possession of its real property.

9 9. These attorneys' fees are in addition to attorneys' fees incurred prior to the non-compliance
10 and are now owing to Secured Creditor from Debtors pursuant to the Trust Deed.

11 10. Should the Debtor cure the default, the Debtors must forward the funds to:

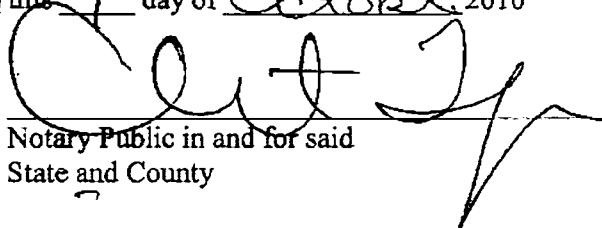
12 **GREGORY L. WILDE, ESQ.**
13 **WILDE & ASSOCIATES**
14 **212 South Jones Boulevard**
15 **Las Vegas, Nevada 89107**

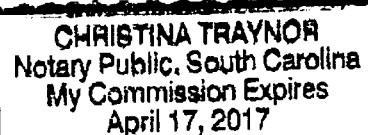
16 I declare under penalty of perjury that the foregoing is true and correct.

17 
18 LeeAnn Anderson

19 VP Loan Documentation

20 SUBSCRIBED and SWORN to before me
21 this 1 day of October, 2010

22 
23 Notary Public in and for said
24 State and County





1 Electronically Filed _____
2
3
4

Entered on Docket
March 15, 2010



Hon. Linda B. Riegle
United States Bankruptcy Judge

8 WILDE & ASSOCIATES
9 Gregory L. Wilde, Esq.
Nevada Bar No. 004417
10 212 South Jones Boulevard
Las Vegas, Nevada 89107
11 Telephone: 702 258-8200
Fax: 702 258-8787
12 Bank of America Mortgage Capital Corporation
09-77522 / 0028813541

13
14 **UNITED STATES BANKRUPTCY COURT**
15
16 **DISTRICT OF NEVADA**

17 In Re:

18 Franklin G. Fuentes and Christine M. Fuentes

BK-S-09-23777-lbr

MS Motion No.
Date: February 9, 2010
Time: 10:30 a.m.

20 Chapter 13

21 Debtors.

22
23 **ORDER RE ADEQUATE PROTECTION**

24 Secured Creditor's Motion for Relief from the Automatic Stay having come on for hearing
25 in the above-entitled Court, all appearances as noted on court record, and based upon all the
26 papers and pleadings on file herein and good cause appearing therefore,

EXHIBIT A

1 IT IS HEREBY ORDERED, ADJUDGED and DECREED that the debtors will cure the
 2 post-petition arrearages currently due as follows:

3 Monthly Payments at \$2,815.56 (December 1, 2009 - February 1, 2010)	\$8,446.68
4 2 Late Charges at \$112.83 (November 1, 2009 - January 1, 2010)	\$225.66
5 Property Inspections	\$15.00
6 Motion for Relief Filing Fee	\$150.00
7 Attorneys Fees	\$750.00
Total	\$9,587.34

8
 9 The total arrearage shall be paid in six monthly installments. Payments one
 10 through five (1-5) in the amount of \$1,616.70 shall be in addition to the regular monthly payment
 11 and shall be due on or before the 20th day of the month commencing with the March 20, 2010
 12 payment and continuing throughout and concluding on or before July 20, 2010. The sixth final
 13 payment in the amount of \$1,616.67 shall be paid on or before August 20, 2010.

14 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Secured Creditor
 15 shall give Debtors at least seven business days' notice of the time, place and date of sale.

16 IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Debtors shall resume
 17 and maintain the regular monthly payments in a timely fashion, outside of any Bankruptcy Plan,
 18 beginning with the March 1, 2010, payment, on Secured Creditor's Trust obligation, encumbering
 19 the subject Property, generally described as 4703 Visconti Way , Las Vegas, NV 89141, and
 20 legally described as follows:

21 PARCEL ONE (1):

22 LOT 24 BLOCK A OF LAURENTIA AT SOUTHERN HIGHLANDS, AS SHOWN BY
 23 MAP THEREOF ON FILE IN BOOK 96, OF PLATS, PAGE 65, IN THE
 24 OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

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A NON-EXCLUSIVE RIGHT AND EASEMENT OF INGRESS, EGRESS, AND OF

1 USE AND ENJOYMENT IN TO AND OVER THE COMMON ELEMENTS AS SET
2 FORTH IN THE DECLARATION OF COVENANTS, CONDITION AND
3 RESTRICTIONS AND RESERVATION OF EASEMENTS FOR SOUTHERN
4 HIGHLANDS, RECORDED JANUARY 6, 2000 IN BOOK 20000106 AS
5 DOCUMENT NO. 01678, AS THE SAME FROM TIME TO TIME BE AMENDED
6 AND/OR SUPPLEMENTED IN THE OFFICE OF THE COUNTY RECORDER OF
7 CLARK COUNTY, NEVADA.

8 IT IS FURTHER ORDERED, ADJUDGED and DECREED that if the Debtors fail to make
9 any payments as stated in this Order, or fail to maintain the regular monthly payments on Secured
10 Creditor's Trust Deed obligation, allowing the normal grace period, then Secured Creditor may file
11 and serve upon Debtors and Debtors' counsel, a fifteen (15) Day Notice Declaration Re Breach of
12 Condition. For each such Declaration Re Breach of Condition filed, there shall be assessed an
13 attorney fees of \$100.00, to be paid by the Debtors upon any reinstatement. If upon the sixteenth
14 (16th) day Debtors have failed to cure the delinquency, then Secured Creditor may submit to this
15 Court an Order vacating the automatic stay as to Secured Creditor, and Secured Creditor may
16 thereafter proceed with foreclosure proceedings upon the subject Property, pursuant to applicable
17 State Law, and take any action necessary to obtain complete possession thereto.

18 Submitted by:

19 WILDE & ASSOCIATES

20 By /S/GREGORY L. WILDE

21 GREGORY L. WILDE, ESQ.
22 Attorneys for Secured Creditor
23 212 South Jones Boulevard
24 Las Vegas, Nevada 89107

25 APPROVED AS TO FORM & CONTENT:
26

27 Kathleen A Leavitt

28 By _____
29 Kathleen A Leavitt
30 Chapter 13 Trustee
31 201 Las Vegas Blvd., So. #200
32 Las Vegas, NV 89101

Sam Benevento

By _____
Sam Benevento
Attorney for Debtors
1945 E. Warm Springs Road
Las Vegas, NV 89119

Nevada Bar No. 3676

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17 **UNITED STATES BANKRUPTCY COURT**
18 **SOUTHERN DISTRICT OF NEVADA**

19 In Re:

20 Franklin G. Fuentes and Christine M. Fuentes

21 09-23777-lbr

22 MS Motion No.

Date:

Time:

23 Chapter 13

Debtors.

24 **CERTIFICATE OF MAILING OF**
DECLARATION RE BREACH OF CONDITION

25 1. On 10/4/10 I served the following documents(s):

26 DECLARATION RE BREACH OF CONDITION

27 2. I served the above-named document(s) by the following means to the persons as listed below:

28 X a. ECF System

1 Sam Benevento
2 gencraldelivery@nevlawyers.com
3 Attorney for Debtors

4 Kathleen A Leavitt
5 courtsecf3@las13.com
6 Trustee

7 **X b. United States mail, postage fully prepaid:**

8 Franklin G. Fuentes and Christine M. Fuentes
9 4703 Visconti Way
10 Las Vegas, NV 89141
11 Debtors

12 **c. Personal Service (List persons and addresses. Attach additional paper if necessary)**

13 I personally delivered the document(s) to the persons at these addresses:

14 1. For a party represented by an attorney, delivery was made by handing the
15 document(s) to the attorney's office with a clerk or other person in charge, or if no one is charge
16 by leaving the document(s) in a conspicuous place in the office.

17 N/A

18 2. For a party, delivery was made by handing the document(s) to the party or
19 by leaving the document(s) at the person's dwelling house or usual place of abode with someone
20 of suitable age and discretion residing there.

21 N/A

22 **d. By direct mail (as opposed to through the ECF System)**

23 *(List persons and email addresses. Attach additional paper if necessary)*

24 Based upon the written assignment of the parties to accept service by email or a court order. I
25 caused the document(s) to be sent to the persons at the mail addresses listed below. I did not
26 receive, within a reasonable time after the transmission, any electronic message or other
 indication that the transmission was unsuccessful.

27 **e. By fax transmission (List persons and fax numbers. Attach additional paper if necessary)**

28 Based upon the written assignment of the parties to accept service by fax transmission or
29 a court order. I faxed the document(s) to the persons at the fax numbers listed below. No error

1 was reported by the fax machine that I used. A copy of the record of the fax transmission is
2 attached.
3

4 f. By messenger (*List persons and addresses. Attach additional paper if necessary*)
5

6 I served the document(s) by placing them in an envelope or package addressed to the
7 persons at the addresses listed below and providing them to a messenger for service.

8 (*A declaration by the messenger must be attached to this Certificate of Service*).
9

10 I declare under penalty of perjury that the foregoing is true and correct.
11

12 Signed on: 10/4/10

